

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF the Taxation of Solicitor-
and-Client Costs

BETWEEN:

BAYLY WILLIAMS

- and -

NORMAN MEEK

REASONS FOR JUDGMENT

1 This is an appeal by Mr. Meek of the taxation by the taxing officer (Clerk of
the Court) of the bills of cost rendered to him by his solicitors Bayly Williams, pursuant
to Rule 591.

2 For five years prior to June 1991 Mr. Meek had been in the employ of the
Government of the Northwest Territories as a pension and insurances specialist. In June
1991 unhappy differences arose between Mr. Meek and his employer. The employer
purported to dismiss him. Subsequently, by order of this Court (CV 03220), the notice
of dismissal was set aside, as the employer had failed to adhere to the procedural
requirements then contained in the *Public Service Act*. The Court also directed the
employer to pay Mr. Meek's legal costs incurred in obtaining that court order, on a full
solicitor-client basis. Though "re-instated" by court order, Mr. Meek was again dismissed
by his employer in February 1992.

3 Mr. Meek took the position that he had again been wrongfully dismissed. He continued to pursue his legal remedies against his employer. In June 1993 he changed solicitors to Bayly Williams and commenced a fresh court action (CV 04742). Although the relief sought in the statement of claim was damages of \$185,000, interest and solicitor-client costs, Mr. Meek was in reality seeking: a) full salary and benefits for the time period June 1991 - February 1992, and b) damages for the wrongful dismissal in February 1992.

4 At the commencement of the solicitor-client relationship in June 1993, Mr. Meek and the Bayly Williams firm entered into a written agreement. In that agreement Mr. Meek agreed to pay for legal services rendered on a time-spent basis at certain maximum hourly rates. Further, he agreed to pay all statements of account when rendered, and to pay interest on any unpaid accounts.

5 Between June 1993 and January 1995 the Bayly Williams firm pursued Mr. Meek's claim against the GNWT. At Mr. Meek's instructions, much of the effort was aimed at achieving a negotiated settlement - but to no avail. From a review of the exhibits entered at the taxation appeal, it appears that on at least three separate occasions the GNWT made an offer of settlement (including a tender of funds) of that portion of Mr. Meek's claim for full salary and benefits for June 1991 - February 1992 (which one would think would be fairly straight-forward) and each time the settlement offer was rejected.

6 The Bayly Williams firm submitted statements of account to Mr. Meek in

August 1993, November 1993, January 1994, February 1994, May 1994, October 1994 and January 1995. None has been paid by Mr. Meek (other than the application of the \$1,000 retainer initially left with the firm in June 1993). As at January 1995 the outstanding balance for fees, disbursements and GST tax was \$17,390.47.

7 In January 1995 unhappy differences between Mr. Meek and his solicitors resulted in a termination of their relationship.

8 As Mr. Meek refused to pay the accounts, the solicitors sought taxation of these bills of costs by the taxing officer pursuant to the Rules of Court.

9 On June 23, 1995 the taxing officer taxed the bill of costs in the full amount of \$17,390.47.

10 Mr. Meek was unhappy with the procedure followed by the taxing officer and with the result. Hence this appeal.

11 At the hearing of the appeal, the Court heard two days of *viva voce* testimony from Mr. Meek.

12 In his verbose Notice of Appeal and in his lengthy testimony/representations, Mr. Meek essentially makes two complaints - one against the taxing officer and the other against his former solicitors.

13 As to the actions of the taxing officer, Mr. Meek alleges:

a) he was not allowed to make representations on the taxation.

- b) although the taxation was styled in action CV 03220, the bill of costs represented legal services rendered in relation to two court actions (CV 03220 and CV 04742).
- c) two pages were missing in Mr. Meek's copy of the Affidavit of Disbursements.
- d) the taxing officer did not provide Mr. Meek with a copy of the taxing officer's "worksheet".

14 There is no merit in any of these grounds. They are specious. The taxation was re-scheduled and adjourned several times to accommodate Mr. Meek. He did not appear at the appointed hour on June 23 and the taxing officer proceeded in his absence as she was entitled to do in the circumstances. Mr. Meek is not entitled to a copy of the taxing officer's own notes. The two pages that were missing from Mr. Meek's copy of the Affidavit of Disbursements represented documents that had been in the possession of Mr. Meek many months earlier, as he acknowledges. The existence of two separate court actions is of no import, in the context of the taxation. The legal services were rendered on the one integrated claim against GNWT, as Mr. Meek acknowledges.

15 As to Mr. Meek's complaint against his former solicitors, he essentially takes the position that the legal fees are excessive and that he did not get value-for-dollar.

16 I have reviewed the evidence that was before the taxing officer, and have considered the *viva voce* testimony offered, the documentary exhibits tendered, and the representations of both Mr. Williams and Mr. Meek. From all of this, two significant facts emerge which in my view had a direct bearing on the amount of time that Mr. Williams expended on this file and consequently on the size of the account.

17 Firstly, Mr. Meek was (and is) involved in a bitter dispute with his former
employer. Whether it was he, or the employer, who was intransigent is not for me to
decide on this appeal.

18 Secondly, as a client, Mr. Meek was an exacting, perhaps difficult, person
for Mr. Williams to deal with. The evidence indicates that he gave Mr. Williams very
detailed instructions throughout as to what he would or would not accept in any
settlement package, to the point that it appears that he was obsessed with, and insistent
upon, the minutiae of each offer and counter offer. He was, by his own admission, a
demanding client. This trait, or fact, obviously resulted in a requirement for more and
more of his lawyer's time.

19 I note, for example, that a substantial portion of the legal services were
rendered in late 1993, particularly during December 1993, because of Mr. Meek's
insistence that the matter be settled and concluded by December 31 (presumably for tax
reasons).

20 Mr. Meek presents as a person of some intelligence. As he considered each
offer or counter offer, and gave specific instructions to Mr. Williams in this regard, he had
to know that his lawyer's time clock was running, and that he was paying for services
on a time spent basis. In late 1993, it appears the litigants were less than \$10,000 apart
in their settlement negotiations. At some point when one is involved in protracted
negotiations and paying for one's lawyer/negotiator on a time spent basis, the "law of
diminishing returns" sets in. Yet Mr. Meek made the decision to continue with the

services of his lawyer.

21 It is abundantly clear that Mr. Meek wanted the litigation settled. He is unhappy that no settlement was reached on a timely basis - but that is hardly his lawyer's fault. It is the litigants who must agree to a settlement. The stark fact is that Mr. Meek would not agree to what the GNWT was proposing and the GNWT would not agree to his proposal. He appears unable to accept that others might disagree with him.

22 The evidence indicates that Mr. Williams made his best efforts to comply with his client's instructions in achieving a settlement. Throughout, Mr. Williams offered advice to his client, but often that advice was not accepted. The relationship deteriorated. Viewing the contents of the exchange of correspondence between solicitor and client, it is surprising that the two did not part company earlier than they did. In retrospect, perhaps they should have.

23 During the course of his *viva voce* testimony at the hearing of his appeal, Mr. Meek at times was evasive and engaged in semantics. This affected his credibility on the taxation appeal.

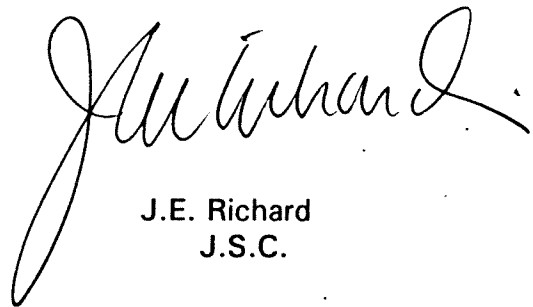
24 In all of the circumstances, I am not satisfied that the solicitors' bill of costs was unreasonable, for the reasons I have mentioned.

25 Mr. Meek's request for an extension of time for the filing of this appeal is granted, there being no objection by the Bayly Williams solicitors. However, the appeal from taxation is dismissed.

26 The solicitors shall be entitled to interest on the unpaid balance of \$17,390.47 from January 31, 1995 to the date of payment, at a rate determined in accordance with s.55(3) of the *Judicature Act*.

27 As to costs of the taxation and the appeal from taxation, Mr. Meek indicated that he wished to make submissions to the court on these costs, once the merits of his appeal were determined. I will therefore receive any submissions the parties have regarding costs, in writing, within 20 days of the filing of these reasons.

28 I direct the Clerk of the Court to place the original of these reasons on court file folder CV 03220A and to provide copies only to Mr. Meek and the Bayly Williams firm. Access to file folder CV 03220A (which also contains the sealed exhibits and submissions) will be restricted to Mr. Meek and the Bayly Williams firm until such time as Mr. Meek's litigation with GNWT on files CV 03220 and CV 04742 is concluded, after which those documents can be placed on the main court file CV 03220.



J.E. Richard
J.S.C.

Yellowknife, Northwest Territories
January 5, 1996

CV 03220

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